

Remarks

Claims 1-5 are currently active in the application. Claims 3 and 5 stand rejected under 35 U.S.C. §112, second paragraph as indefinite. Claims 1-3 and 5 stand rejected under 35 U.S.C. §102(e) as anticipated or, alternatively, under 35 U.S.C. §103(a) as obvious over Nicholson '769. Claim 4 stands objected to for being dependant upon a rejected base claim.

The Applicant appreciates the opportunity for the telephone interview between Applicant's representative Attorney John Conway and Examiner Austin Bonderer on October 28, 2004. Claim 3 was discussed and it was agreed that the claim would be amended to make clear that the surface recited in line 3 is "the corresponding body surface" which has antecedent basis in claim 1, namely, "a body having first and second opposite surfaces." It was further agreed that the word "maximum" would be inserted to modify the "projection of each bulge" to make clear the projection against which projections of other horizontal slices of the protruding member closer to the surface are measured. Claim 5 was discussed and it was agreed to rewrite the claim to make clear that each body opposing surface has two protruding members. With these claim amendments, it was agreed that the 35 U.S.C. § 112 rejections would be overcome.

The Nicholson '769 reference was discussed. In particular, Attorney Conway pointed out that Nicholson '769 does not fairly teach using the implant without inserting bone graft material into the cavity in the implant. Thus, claim 1 should be allowable, since it requires that fusion of the vertebrae is

achieved without a bone graft. Examiner Bonderer suggested putting the details of this argument into the response, so that the claim rejections over Nicholson can be revisited.

Claim 3 has been amended to clarify the claim language. Support for the amendments is provided by various figures of the present application, including figs. 1 and 4. Claim 5 has been amended to clarify that each opposing body surface has exactly two protruding. Support for the amendment is provided in fig. 4 of the present application, which shows two protruding members on each body surface.

Claim Rejections --- 35 U.S.C. §112, second paragraph

Claims 3 and 5 stand rejected under 35 U.S.C. §112, second paragraph as indefinite. As stated above, claim 3 has been amended to make clear the antecedent basis for “the surface” in line 3 and to clarify the projection limitation for the bulges. Claim 5 has been amended to clarify that each body surface has exactly two protruding members. Each claim is now clear and definite.

Claim Rejections --- 35 U.S.C. §103(a)

Claims 1-3 and 5 stand rejected under 35 U.S.C. §102(e) as anticipated or, alternatively, under 35 U.S.C. §103(a) as obvious over Nicholson '769.

Claim 1 requires (in part):

“A method for fusing a first vertebrae to a second adjacent vertebrae...such that fusion of the vertebrae is achieved without a bone graft.”

Nicholson '769 teaches an implant for use in fusing adjacent vertebrae. The Nicholson device has a central cavity, labeled "34" in fig. 5 of Nicholson '769. The device is "prepared for insertion by filling the interior portion 34 with harvested bone." See Nicholson '769, col. 10, lines 23-31. Once the implant cavity is filled with bone graft material, the implant is installed by inserting the dovetail protrusions of the implant into keyways cut into the vertebral bone. Nicholson '769 teaches, in multiple locations in the specification, that the device needs bone growth material to bond with the adjacent vertebrae. See, e.g., Nicholson '769 col. 5, lines 38-42; col 6, lines 53-58, etc. Nicholson '769 neither teaches, discloses nor suggests using the implant for vertebral fusion without a bone graft. Nicholson effectively teaches away from any method of fusing adjacent vertebrae without a bone graft. Thus, claim 1, which requires a method of fusing vertebrae without using a bone graft, is allowable over Nicholson '769. Claims 2-5, which depend from claim 1 and add further limitations are allowable over Nicholson '769 for at least the same reasons as for claim 1.

Claim Objection

Claim 4 stands objected to as depending from a base claim that is not allowed. As argued above, Applicant believes the base claim as written is allowable.

For the reasons set forth above, it is submitted that all pending claims are now in condition for allowance. Reconsideration of all pending claims and a notice of allowance are therefore requested. If any additional fees are

required for the timely consideration of this application, please charge deposit account number 19-4972. The Examiner is requested to telephone the undersigned if any matters remain outstanding so that they may be resolved expeditiously.

Respectfully submitted,



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